

**Luk, Incorporated and Terri Brenneman. Case 8-
CA-13355**

April 15, 1981

DECISION AND ORDER

On November 4, 1980, Administrative Law Judge Marvin Roth issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings,¹ findings,² and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Luk, Incorporated, Wooster, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) Expunge any reference in Brenneman's personnel file to action taken against her because of her union activities."

2. Substitute the attached notice for that of the Administrative Law Judge.

¹ In its brief to the Board filed November 26, 1980, Respondent excepted to the Administrative Law Judge's exclusion of evidence relating to a complaint filed by Terri Brenneman against Respondent with the Ohio Civil Rights Commission. Respondent's brief includes a motion to reopen the record to admit the excluded evidence and newly discovered evidence on the same subject. In our opinion, the Administrative Law Judge properly ruled that the evidence of proceedings before the Commission was inadmissible for the purpose of impeaching Brenneman's credibility. We therefore find Respondent's exception without merit and hereby deny its motion to reopen the record in this case.

² Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd, 188 F. 2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

³ Evidence adduced at the hearing indicates that the personnel file maintained by Respondent for employee Terri Brenneman contains reference to her unlawful discharge, and we are therefore of the opinion that an expunction remedy is necessary to eliminate completely the effects of Respondent's unfair labor practices. Accordingly, we shall order that Respondent expunge from the personnel file of Terri Brenneman any reference to the discharge herein found unlawful.

Member Jenkins would compute the interest due on backpay in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discourage membership in International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, or any other labor organization, by discriminatorily terminating employees, or in any other manner discriminating against them with regard to their hire or tenure of employment of any term or condition of employment.

WE WILL NOT threaten you with plant closure, loss of jobs, or worse working conditions if you choose UAW or any other labor organization as your bargaining representative.

WE WILL NOT expressly or impliedly promise or announce wage increases or other benefits in order to discourage support for UAW or any other labor organization.

WE WILL NOT question you concerning your union attitude or activities.

WE WILL NOT create the impression of spying on employee union activity by telling employees about reports we receive concerning such activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your right to engage in union or concerted activities, or to refrain therefrom.

WE WILL offer Terri Brenneman immediate and full reinstatement to her former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights, and make her whole for losses she suffered by reason of the discrimination against her, with interest.

WE WILL expunge from Terri Brenneman's personnel file any reference to action we took against her because of her union activities.

All our employees are free to become, remain, or refuse to become or remain, members of International Union, United Automobile, Aerospace and

Agricultural Implement Workers of America, UAW, or any other labor organization.

LUK, INCORPORATED

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge: This case was heard at Wooster, Ohio, on June 12 and 13, 1980. The charge was filed on November 13, 1979,¹ by Terri Brenneman, an individual. The complaint, which issued on December 28, and was amended on January 18, 1980, and at the hearing, alleges that Luk, Incorporated (herein called Respondent or the Company), violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act. The gravamen of the complaint, as amended, is that the Company allegedly discharged Brenneman because it knew or believed that she had engaged in union or other protected concerted activities, and allegedly threatened its employees with plant closure or other reprisal, promised redress of grievances, granted benefits, and engaged in interrogation and created the impression of surveillance, all in order to discourage support for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (herein called the Union). The Company's answer denies the commission of the alleged unfair labor practices. All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally, and to file briefs. The General Counsel and the Company each filed a brief.

Upon the entire record in this case² and from my observation of the demeanor of the witnesses, and having considered the arguments of counsel and the briefs submitted by the General Counsel and Respondent, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Company, an Ohio corporation, maintains its principal office and only plant in Wooster, Ohio, where it is engaged in the manufacture of automotive clutch assemblies. In the operation of its business, the Company annually ships products valued in excess of \$50,000 from its Wooster plant directly to points located outside of Ohio. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Nature of the Company's Operation, Pertinent Managerial Authority, and Alleged Background Evidence With Respect to the Alleged Unfair Labor Practices*

The Company was organized in March 1977 and commenced production at the Wooster plant in December of that year. Since that time the Company has enjoyed a steady growth. In September 1978 the plant had about 35 employees. By September 1979 there were about 60 employees. By May 1979, when the first unfair labor practices allegedly occurred, the plant was operating on three shifts. The Company is owned by an American firm (MTD) and by Luk, G.m.b.H., a German firm. The Company has a four-member board of directors. Two are officials of MTD, and the other two are officials of the German parent Company, and reside in Germany. John McFadden, one of the American members, is president of MTD and executive vice president and treasurer of the Company. None of the Company's board members or corporate officials are involved in managing the Company's day-to-day operations. Dieter Kaesgen is the Company's general manager, and has been in charge of the Company's day-to-day operations since the commencement of operations in 1977. Russell Yoder is company personnel manager. Since July 2, 1979, Gabriel Rozsa has been second-shift plant superintendent, and in that capacity is in charge of operations on the second shift. Since May 14, 1979, James Fladda has been second-shift supervisor. Fladda functions as Rozsa's immediate subordinate. Fladda began working for the Company in October 1977 as a machine operator. In mid-1978 Fladda was promoted to setup leadman, and on May 14, 1979, he assumed his supervisory position. Rozsa worked for the Company in early 1979 as a part-time receiving inspector, left the Company's employ, and returned in July to assume his present position. It is undisputed that since May 14 and July 2, respectively, Fladda and Rozsa have been supervisors within the meaning of Section 2(11) of the Act. However, the evidence fails to establish that either of them was a supervisor within the meaning of the Act prior to those respective dates.

Sharon Polling nee Scott worked for the Company from December 1977 until September 1978 when she walked off her job. Polling testified, in sum, that she did so because she was dissatisfied with the conditions of employment at the plant. At the time of the present hearing Polling resided in South Carolina. Polling was a good friend of Terri Brenneman. In late 1978 they shared an apartment, and Brenneman used Polling as a reference when she applied for and obtained a job with the Company in July 1978. Their friendship was known to General Manager Kaesgen. Polling testified that one day in May or June of 1978 she was talking to Kaesgen in his office. (The Company's manufacturing operations are located on the first floor of the plant building. Kaesgen's office and other office facilities are located on the second floor.) According to Polling, she was presenting employee demands, including a raise, and Kaesgen kept insisting that the Company was too young to afford such im-

¹ All dates herein refer to 1979 unless otherwise indicated.

² Certain errors in the transcript are hereby noted and corrected. Resp. Exh. 1 (text of Kaesgen speech) and G.C. Exh. 3 (employer statement of reason for termination) were identified in testimony but never formally offered in evidence. Both exhibits are hereby received in evidence.

provements. Polling testified that during this conversation a man whom she later learned to be Union Representative John Allar was passing out union literature and cards at the plant entrance. According to Polling, Kaesgen asked who he was, and she truthfully said that she did not know. However, as she left work that day she took a card from Allar. Some 2 or 3 weeks later Polling and another employee contacted Allar and a meeting was set up in her apartment at which Allar and some employees were present. Polling testified that about a week or two later she was summoned to Kaesgen's office, where Kaesgen said that he heard she wanted a union. Polling answered that they wanted a union because they were not getting results from the Company. According to Polling, Kaesgen insisted that the Company was too young, that it could not afford a raise, and that a union would make the Company go under. He urged that the employees wait and things would get better. Kaesgen added that with a union the employees could no longer take long breaks. Polling talked to other employees about her conversation with Kaesgen. The employees continued to talk about a union, but they took no further action, and the matter of a union was shelved for the time being. Polling testified that, about a week after her second conversation with Kaesgen, he told her that he heard that she told everyone that he had bitched her about the Union. Polling answered that she just repeated what he said. General Manager Kaesgen, who was presented as an adverse witness for the General Counsel and as a company witness, testified that he had no knowledge of any union activity prior to May 21, 1979, that he did not know that Polling was active for a union, and that he never discussed a union with Polling. James Fladda, who was presented as a company witness, and who was either a machine operator or leadman in May or June 1978, testified that he was unaware of any union activity during that period. The remaining witnesses (Brenneman and employee Connie Kendall for the General Counsel and Supervisor Rozsa for the Company) were not working for the Company during that period. Union Representative Allar was not presented as a witness.³ As my resolution of the credibility questions thus presented turns to a considerable extent on testimony and documentary evidence concerning subsequent events, I shall defer resolution of those questions to a later point in this Decision.

*B. The Union Activity in May 1979 and the
Company's Alleged Unlawful Responses to that
Activity*

It is undisputed that on Monday, May 21, 1979, Union Representative Allar distributed union literature and cards at the plant employee entrance, and that such activity immediately came to the attention of General Manager Kaesgen. Within the next 2 or 3 days, Kaesgen assembled and addressed meetings of the employees. Kaesgen conducted one meeting for second- and third-shift

employees, followed by a meeting of the first shift.⁴ Terri Brenneman and Connie Kendall, who both worked on the second shift, were present at the meeting for that shift. They testified, in sum, that Kaesgen did not appear to be reading from a prepared text. According to Brenneman, Kaesgen told the employees that he saw the Union was there, and that some employees must be upset with their working conditions. According to Brenneman, he added that they should feel free to come to him with their complaints, and that such complaints could better be discussed between two people than with a third party involved. Brenneman testified that Kaesgen held up a document which he identified as a union booklet, and told the employees that they would not want the rules in that booklet. When an employee asked if or when they would get a raise, Kaesgen answered that he could not say because of the Union's presence, as it would look like a bribe, and that much of the Company's money was going into the construction of an additional building. Connie Kendall did not testify in detail concerning the meeting. However she corroborated in part the testimony of Brenneman. Kendall testified that Kaesgen said he saw the Union outside, that he recited various things which the Company had done for the employees, asserted that the Company had treated them well, and, in response to an employee question about a raise, stated that he could not discuss it because the Union was outside and it would look like a bribe.

Kaesgen and Supervisor Fladda, who was present at the meeting for second- and third-shift employees, testified that Kaesgen read from a six-page prepared text. As indicated, that text is in evidence. In sum, the text indicated that Kaesgen acknowledged the presence of a union representative "a couple of days ago," asserted that a union was unnecessary, recited the Company's history of growth, acknowledged the employees' help, asserted that the Company was "flexible" and wanted to build a viable company with good wages and other benefits and a place where employees wanted to stay, asserted the suitability of the Company's "open door policy," argued that an outside organizer was unnecessary and a source of strife, referred to the Company's personnel policies including a pledge to "pay wages that compare with similar industries in the area" and promise of "periodic review," asserted his belief that the Company had lived up to its "rules and pledges," and, in closing, urged the employees not to sign a union card and to "keep Luk a happy family." The last page of the text consists of a summary table of average employee earnings. However Kaesgen did not indicate how this table fit into the text of his speech. At no point does the text indicate that Kaesgen either promised or confirmed a prior promise to consider a wage increase at any particular period of time. As indicated, Kaesgen testified that he read from his prepared text. However Kaesgen admitted that he answered employee questions during the meeting. Kaesgen testified

³ I shall at various points in this Decision comment on the failure of either or both parties to present the testimony of individuals who ostensibly were in a position to give probative testimony concerning disputed matters.

⁴ The second and third shifts worked overlapping hours. Kaesgen testified that he conducted the meetings on May 23 and 24, respectively. Brenneman testified that the meeting for second- and third-shift employees took place on May 22. Connie Kendall, in her testimony, was uncertain of the date. I find it unnecessary to resolve this discrepancy.

that he held up a copy of a union contract, and referred to the "rules" therein, and that he did so in response to a question about the Company's absenteeism and tardiness policy. Kaesgen testified that he did not ask the employees to bring their grievances to him, or say that the Company's money had to go into the new addition. However he did not deny the testimony of Brenneman and Kendall concerning a question and Kaesgen's answer about a pay raise. The General Counsel contends that, at these meetings, the Company violated Section 8(a)(1) by soliciting grievances from its employees in order to discourage their union activities. In order to fully consider this allegation, and the underlying questions of credibility, it is necessary to consider the evidence with respect to a related allegation, namely, that about 2 or 3 weeks later the Company violated Section 8(a)(1) of the Act by announcing a wage increase and other benefits and improvements in working conditions in order to discourage union activity.

In early June Kaesgen again assembled the employees to meetings on company time and premises (one for the first shift and another for the second and third shifts) at which he announced a general wage increase and other benefits. The meeting for the second and third shift was held on Tuesday, June 5. Terri Brenneman, who was present at the June 5 meeting, testified that Kaesgen said that he had taken the employees' complaints and requests into consideration and came up with a package which he hoped would be satisfactory. According to Brenneman, Kaesgen did not refer to any past practice. It is undisputed that Kaesgen announced that the employees would receive a 35-cent-per-hour wage increase, an additional paid holiday (Good Friday), increased life insurance and sickness and accident benefits, and establishment of a pension fund. Kaesgen also announced that the employees would be paid weekly instead of biweekly, and on Thursday instead of Friday. According to Brenneman, Kaesgen said that the first-shift employees had requested the first change, and that the second change was made in response to a request by a second-shift employee. Brenneman testified that Kaesgen announced that the Company would install ceiling fans, and that it was doing so at the request of the first-shift employees. It is undisputed that during the June 5 meeting the employees asked for two breaks instead of the one which they were receiving, and that Kaesgen agreed instead to increase the break period from 10 to 15 minutes. Kaesgen testified that he told the employees that he was announcing the economic package "in keeping with past practices." Kaesgen further testified that he did not, as part of his formal presentation, announce installation of the ceiling fans, but that in response to a question from an employee he stated that the Company was working on the problem. Kaesgen testified that in fact the fans had been ordered, and that he did so in anticipation that with the approach of warm weather, employees would as they did in 1978, complain about the inadequacy of the existing small fans.

Kaesgen testified that he announced the pay increase and other benefits by reading from a statement which indicated that these improvements were "in line with our policy of periodically reviewing wage and fringe bene-

fits." In fact, the Company had never previously given its employees either a general wage increase (whether cost of living or otherwise), or improved fringe benefits, nor did the Company ever inform the employees that it had a policy of periodically reviewing wage and fringe benefits. The only previous change in the employee wage structure consisted of an "incentive" or bonus plan, based on production output, which was instituted in October 1978, but which did not affect the hourly wage rate. Kaesgen testified that employees constantly asked him when they would get a pay raise, and that he consistently answered "that about mid-year we would look at an increase." However, Terri Brenneman testified that, when she complained to Supervisor Fladda about when if ever the employees would get a raise, Fladda responded that the plant was too small. His response was similar to that allegedly given by Kaesgen to Polling in 1978. Kaesgen's testimony concerning his responses to the employees' inquiries was uncorroborated. (The Company did not present any employee witnesses. The Company's only witnesses were Supervisors Kaesgen, Rozsa, and Fladda.) If in fact Kaesgen had promised the employees that there would be a wage review about mid-year, then it is probable that he would have reminded the employees of that promise in his presentations in late May. It is not unlawful for an employer, in the face of a union organizational campaign, to remind his employees of promises or commitments previously given to them. Indeed, Kaesgen's alleged speech purported to contain a review of the Company's policy on wages. However Terri Brenneman and Connie Kendall testified without contradiction that Kaesgen refused to make any commitment concerning a wage increase, because it would look like a bribe. This fact tends to confirm that Kaesgen never indicated when there might be a wage increase. *A fortiori*, if the Company had previously decided to give a general increase in wages and benefits by mid-1979, even without finalizing the amount of that increase, then it is probable that the Company, in order at least to ameliorate employee complaints, would inform them of that decision. The absence of such assurances indicates that in fact the Company had not decided upon an increase in wages or benefits, and further tends to corroborate the testimony of Polling and Brenneman.

Notwithstanding the absence of any previous general increase in employee wages and fringe benefits, Kaesgen testified in sum that the Company had a practice of granting increases in June of each year, and intended to continue that practice in June 1979. Kaesgen testified that the seven personnel with which the Company began (including himself) began receiving their salary or wages in June 1977, and that all received increases in June 1978. None of the seven were hourly rated employees. Kaesgen testified that no hourly rated employee received an increase "because none had been there for more than six months." This was not true. Sharon Polling, at least, had been working for the Company since December 1977 when production commenced. Kaesgen further testified that the Company instituted the incentive plan in October 1978 because production had increased to a point which warranted such a plan, and that all person-

nel, including salaried nonproduction personnel, shared in the bonuses under that plan. If by October 1978 operations had progressed to a stage which warranted an incentive system, but not a general wage increase, then it is unlikely that the Company would have also given an increase to its nonhourly rated personnel in June 1978, unless the Company was following a policy of giving increases only to the salaried personnel. Nevertheless, Kaesgen testified that in November 1978 the board of directors, including the German directors, met in Wooster for their annual meeting, and then and there approved a wage increase for May or June 1979 at or about the time of the Company's price increases. Kaesgen testified that the board must approve general wage increases, but that they, i.e., the German directors, "generally go along with what we suggest" because of their distance from the labor market. According to Kaesgen, he subsequently met with Vice President McFadden on the matter. In April they compared their wage rates with those of their competitors, in April and May they worked out the amount of an increase, and on May 21, at the very time that Union Representative Allar stationed himself at the plant entrance, they finalized the amount of the increase. Kaesgen testified that on the advice of company counsel they decided to go ahead with the increase. Kaesgen's testimony concerning this alleged sequence of events was uncorroborated by any other witness or by contemporaneous documentary evidence. McFadden was not presented as a witness. If the Board approved a wage increase at its November meeting, then that fact would presumably be indicated in the minutes of the meeting. The minutes were not offered in evidence at this hearing. However the Company did present in evidence a letter dated May 30, 1979, written in English and purportedly sent by McFadden to the German directors.⁵ The letter contains a description of the economic benefits which the Company was about to announce to its employees. Both the opening and closing paragraphs of the letter made reference to the presence of a union organizer, as follows:

At the very moment that Dieter and I were in the process of reviewing and formulating wage and fringe levels last week, we looked out of his office window only to observe a union organizer arrive and start passing literature to our departing employees.

* * * * *

We will implement revisions at the earliest possible date following advise of counsel regarding the presence of the union organizer the other day. We will keep you advised.

The letter further asserted that, "[a]s we discussed earlier when you were here in November, we are now making improvements in the area of wages and fringes." No documentary evidence was offered which would indicate whether the letter was actually sent or received. The contrived language of the letter indicates that it was in-

tended for the eyes of an administrative law judge rather than for the German directors. I attach no evidentiary value to this patently self-serving document. If anything, it merely serves to call attention to the lack of any corroborative evidence which would predate May 21. Moreover, in light of the general state of the economy, the Company's incipient growth pattern and the Company's subsequent wage policy, it is unlikely that the Company would or could have made any meaningful decision about economic improvements which were not scheduled to be implemented for at least 7 months. Thus, although the Company granted economic improvements in June 1980, it granted a larger increase effective January 1980.

In sum, the evidence indicates that the Company persistently and over a long period of time fended off employee complaints about the lack of a wage increase. However, when in May 1979 a union organizer appeared on the scene, General Manager Kaesgen promptly assembled the employees, urged them not to support the Union, and, within a short period of time, the Company decided on and announced unprecedented economic benefits to its employees. Kaesgen also announced other noneconomic benefits. It is unlikely that Kaesgen would have assembled the employees to the May meetings simply for the purpose of reciting the advantages of the Company's current policies. The employees had vocally and persistently indicated their dissatisfaction with those policies. Such a recitation would have been counter productive to Kaesgen's appeal that the employees refrain from joining the Union. Kaesgen may have made use of a text. However, I do not credit his testimony that he adhered to the text which has been introduced in evidence. I credit the testimony of Terri Brenneman that Kaesgen told the employees that they should feel free to come to him with their complaints, and, in essence, that such complaints could better be discussed between them without a union. Indeed, the testimony concerning the June 5 meeting, including Kaesgen's admissions, indicate at least with respect to noneconomic improvements that they were given in response to current employee requests or complaints. In light of these facts, and the absence of any prior practice of considering or granting wage increases to hourly rated employees, I further credit the testimony of Brenneman that Kaesgen told the employees, in sum, that he was granting the package of benefits in consideration of the employees' complaints, and that Kaesgen did not refer to any past practice. In fact, as heretofore found, the benefits were not announced in conformity with any past practice. I further find that Kaesgen's solicitation of employee complaints at the May meetings, coupled with his urgent appeal that the employees refrain from joining the Union and followed shortly by the announcement of benefits which were in direct response to the employees' complaints, carried with it an implied promise of redress of employee grievances if the employees refrained from supporting the Union. Therefore the Company, by Kaesgen, violated Section 8(a)(1) of the Act. See *Merle Lindsey Chevrolet, Inc.*, 231 NLRB 478, fn. 2 (1977). I further find in light of the foregoing evidence, including the timing of the Company's actions, its

⁵ Kaesgen's accent indicates that German is his native language.

outspoken and urgently expressed opposition to unionization, and the demonstrably false reasons advanced by the Company for its actions, that the Company announced the wage increase and other benefits in order to discourage employee support for the Union. The Company thereby further violated Section 8(a)(1) of the Act. As will next be discussed, I further find that the evidence concerning the Company's actions is mutually corroborative with the testimony of employees Polling, Brenneman, and Kendall concerning certain conversations with supervisory personnel.

Terri Brenneman testified that, as she was coming to work on the afternoon of May 21 (she worked on the second shift), she accepted literature from Union Representative Allar, and he introduced himself. Thereafter Brenneman had no contact with Allar or any other union representative until after her discharge on September 6. However, Brenneman testified that on May 21, while at the plant, she talked in favor of the Union to four other employees, including Mary Swain, and that on succeeding days she spoke in favor of the Union to other employees, including some who worked on the first shift. Brenneman testified that later on May 21, as she was about to go on her break, Supervisor Fladda pulled her aside and said that "you must be dissatisfied," because the Union was "out there again." Brenneman answered that she was dissatisfied, and gave her reasons, including the absence of a pay raise. According to Brenneman, Fladda responded that the plant was too small now, and that if a union came in it would be enough to close the plant down, or at least to cause layoffs. Brenneman argued that seniority meant nothing at the plant. According to Brenneman, Fladda responded that if a union came in it would be harder for employees to leave the line when they wanted. Brenneman asked why Fladda was speaking to her. According to Brenneman, Fladda answered that he heard that she was the one he should speak to, because she was the one who contacted the Union. Brenneman denied that she was the one, whereupon Fladda responded that "Mary" told him that Brenneman was "the one I should be talking to about this." Brenneman testified without contradiction that Mary Swain was the only "Mary" who worked in the plant at that time. Fladda told Brenneman to go ahead and take her break and "we'll see what we can do." Brenneman further testified that, for about a week after the June 5 announcement of benefits, Fladda kept asking her how things were going now and "are you happy now?" Employee Connie Kendall testified that, sometime between the May and June meetings, Fladda talked to her about the Union. Kendall and Mary Swain were talking about the Union when Fladda came to them. The employees changed the subject, but Fladda brought it up again. According to Kendall, Fladda asked if they were interested in the Union, and told them that the plant was still new and too small for a union, and that if the Union came in the plant would "go under" and the employees would lose their jobs.

Supervisor Fladda, in his testimony, denied that he ever discussed the Union with Brenneman or Kendall. Fladda further denied that Swain or anyone else ever told him that Brenneman or any other employee was

active for the Union or that he ever said that Brenneman were active for the Union or that he kept asking Brenneman if she were "happy now." However, Fladda admitted that, as stated in his investigatory affidavit to the Board, he asked Brenneman what she did not like about the plant and that "she always had a lot of complaints." General Manager Kaesgen, in his testimony, denied that any supervisor ever told him that any employees were active for the Union. Mary Swain was not presented as a witness by either side in this proceeding. As the testimony of Terri Brenneman indicates, *prima facie*, that Swain may have acted as an informer for the Company, I am not inclined to draw any adverse inference against the General Counsel by reason of its failure to present her as a witness. Brenneman impressed me as a candid person. On cross-examination she unhesitatingly admitted facts which would seem adverse to her case. Thus she testified that she talked to other employees about the Union while they were at work, and that to her knowledge no supervisor saw or heard her talking about the Union. At one point on her cross-examination Brenneman testified that her conversation with Fladda took place in the "cold winter." However, the Company's counsel had previously questioned her about a conversation which, according to Brenneman, took place early in 1979, when a group of employees, including Fladda (who was then a leadman) talked about the pros and cons of a union. In this context Brenneman may have been thinking about the earlier conversation, and I am not persuaded that her reference to the "cold winter" impugns the credibility of her testimony. At the time of the present hearing Connie Kendall was still in the Company's employ, and there was no union present to represent the employees at the plant. In these circumstances it is unlikely that Kendall would knowingly testify falsely against the Company.⁶ Moreover, the evidence with respect to the May and June meetings tends to corroborate not only the testimony of Brenneman and Kendall concerning their conversations with Fladda, but also the testimony of Sharon Polling concerning her earlier conversations with General Manager Kaesgen. It is unlikely that the Company would have been shaken from its standing policies, and felt compelled to grant an immediate raise and other improvements, unless there was some indication that the employees were receptive to the presence of a union organizer. The testimony of Polling indicates that in 1978 Kaesgen was able to stall off the employees' dissatisfaction by telling them that the Company was too young to afford a raise or a union, and that things would get better. However, 1 year later Kaesgen realized that he could not again get by merely with the same excuses. Kaesgen learned that Brenneman was actively advocating unionization, and that the employees might be receptive to the idea. Therefore the Company decided to take swift action. Indeed Brenneman was a likely suspect, in light of her friendship with Polling and her outspoken views. I credit the testimony of Polling concerning her

⁶ I would not be inclined to give such weight to Kendall's testimony if the evidence indicated that Kendall previously gave testimony or a statement which contradicted her testimony in this proceeding. As will be discussed, the evidence fails to indicate such a contradiction.

conversations with Kaesgen, and the testimony of Brenneman and Kendall concerning their conversations with Fladda.⁷ I find that the Company, through Fladda, violated Section 8(a)(1) of the Act by interrogating employees concerning their union attitude and activities, creating the impression of surveillance of union activities by telling Brenneman that it heard she contacted the Union, impliedly promising redress of employee grievances in order to discourage support for the Union, and threatening its employees with plant closure, loss of jobs, or more onerous working conditions if they selected the Union as their representative. Fladda did not express predictions which were "carefully phrased on the basis of objective fact." Rather, Fladda equated employee selection of a union with plant closure, loss of jobs, and fewer breaks. Therefore his statements contained the threat of retaliation if the employees selected the Union. *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575, 618 (1969). I further find that Fladda's statements, including his sarcastic remarks to Brenneman in June, evidenced not only a hostility toward unionization generally, but also indicated animus toward Brenneman in particular by reason of her leading role in activities which forced the Company to change its personnel policies and in the process to incur unwanted expenses.

C. The Discharge of Terri Brenneman

Terri Brenneman was terminated on September 5. General Manager Kaesgen testified that she was fired for "insubordination." Kaesgen testified, in sum, that her discharge was precipitated solely by her conduct on the evening of September 5, and that he approved Superintendent Rozsa's decision to fire her because she used the words, first to Fladda and then to Rozsa, "if you don't like it, then you can fire me." Kaesgen testified that if she had made the statement only once, i.e., to Fladda, he would not have approved the discharge because she might have been joking, but that, by repeating the statement, she demonstrably challenged the authority of her supervisor. It is undisputed that Brenneman did not at any time actually disobey the instruction of a supervisor, that the Company regarded her as "an excellent worker," that she frequently worked overtime, and that she had no prior disciplinary record. Kaesgen testified that Brenneman was not fired because of union activity, and that he had no knowledge of any union activity by Brenneman prior to her discharge. As heretofore found, the second assertion is false.

Brenneman went on vacation on August 23, and returned to work on September 4. The day after her return (Wednesday, September 5), Brenneman and her fellow employees took their break, as was usual, from 6:30 to 6:45 p.m. About six of them, including Brenneman, were sitting at a table. At the conclusion of the break period, Supervisor Fladda yelled for the employees to return to work. (Normally the leadman performed this function.)

Brenneman testified that at this point the employees began getting up, Connie Kendall went to the restroom, and Brenneman, while talking to employee Julie Kirvin, went over to the water fountain. Brenneman testified that, as she turned away from the fountain, Fladda said "that means you too." According to Brenneman, she answered "all right, I am coming, too," whereupon Fladda said "don't get smart with me." Brenneman testified that she answered "hey, if you don't like my work, fire me," and Fladda responded, "Don't tempt me. I am thinking about it." At this point Brenneman returned to work and Fladda went over to speak to Superintendent Rozsa. Fladda testified that when he told the employees to return to work, all of them got up except Brenneman and Kirvin. According to Fladda, he pointed to them and said that "that means you two," whereupon Brenneman answered, "If you don't like it, fire me." At this point Kirvin returned to work, Brenneman went to the fountain, and Fladda said, "I will think about it." Fladda testified that Brenneman then returned to her work station, which was next to the place where Connie Kendall was working, and he went over to Rozsa and reported the incident. Brenneman and Fladda were the only witnesses presented as to the exchange of words between them (excluding the testimony of Rozsa and Kaesgen as to what Fladda reported to them and the testimony of Connie Kendall as to what Brenneman told her). Julie Kirvin, who was apparently the only other person in a position to hear the exchange, was not presented as a witness. However Kendall's testimony conflicted with that of Fladda in two respects. As indicated, Fladda testified that all of the employees responded to his order except Brenneman and Kirvin, and that after their exchange Brenneman returned to the place where Kendall was working. However, Brenneman and Kendall both testified that Kendall went to the restroom, and did not return until Brenneman was back at work.

Fladda and Rozsa testified, in sum, that when Fladda reported the incident, Rozsa decided that they should go over and talk to Brenneman. Brenneman testified that, when they came over, Rozsa said, "Do you know how long breaks are? They are 15 minutes." According to Brenneman, she answered, "I am up here working, aren't I," whereupon Rozsa responded that he did not like her attitude, and that she should cool off by clocking out, going home, and thinking about it. Brenneman said, "[T]hat is fine," and she clocked out and went home. Connie Kendall testified that Rozsa asked Brenneman what the problem was, that Brenneman did not answer, and that Rozsa told Brenneman that he did not like her attitude and that she should go home and come back the next day. Fladda and Rozsa testified in sum that Rozsa asked Brenneman what was the problem, and Brenneman answered that there was no problem. According to the supervisors, Rozsa then asked her if she knew how long the breaks were, whereupon Brenneman answered, "If you don't like it, you can fire me." According to the supervisors, Rozsa responded that, if she wanted to work in this shop, she would have to have a better attitude, and he instructed her to clock out, which she did. Fladda testified that Kendall could not have heard the

⁷ Polling's testimony, although involving events which occurred more than 6 months prior to filing of the instant charges, may properly be considered as evidence on the merits of the complaint. See *Paramount Cap Manufacturing Company*, 119 NLRB 785 (1957), *enfd.* 260 F.2d 109, 112-113 (8th Cir. 1958); *N.L.R.B. v. Carpenters District Council of Kansas City and Vicinity*, AFL-CIO, 383 F.2d 89, 95-96 (8th Cir. 1967).

exchange because her back was turned to the others and because of the noise from a nearby air compressor. Rozsa testified that he did not think that Kendall could have heard their conversation. However, in his investigative affidavit to the Board, Rozsa stated that Kendall could have heard what was going on. Brenneman and Kendall both testified that Kendall heard the conversation.

Rozsa testified that the next day he told Kaesgen that he wanted Brenneman fired, and Kaesgen agreed. When Brenneman reported to work she found that her time-card had been pulled. She found Rozsa, and he told her, "[Y]ou got your wish. You are fired." Brenneman asked for a reason in writing, and Rozsa told her to go to the personnel office. She did, but Personnel Director Yoder told her he could not give such a statement. Brenneman saw Kaesgen and asked why she was fired. Kaesgen said that she was late for break. Brenneman responded that others were late. Kaesgen countered that "we don't want people showing their authority to our supervisors," and "you told him you wanted to be fired." In response to Brenneman's request, Kaesgen told her that if she returned the next morning she would be given a reason in writing. Brenneman returned the next morning, and Personnel Manager Yoder gave her a written statement that she was discharged for "insubordination and verbal reprisal to company authority." Kaesgen testified that he personally approved the statement. However, he admitted that he would not have used the phrase "verbal reprisal." Kaesgen also indicated that in his view the term "insubordination" would not have been applicable to Brenneman's situation. Kaesgen testified that, in his opinion, insubordination means "not following orders." However Kaesgen admitted that she did follow orders, in that she returned to work.⁸ Indeed Kaesgen's own shifting responses to Brenneman and the Company's delay in giving Brenneman a written statement tend to indicate that the Company was hard put to place Brenneman's discharge in any category.

Subsequent to her discharge, Brenneman filed a claim for unemployment compensation with the Ohio Bureau of Employment Services (BES). Brenneman's claim was rejected, she filed an appeal, and the matter was heard on testimony before a referee of the board of review. Brenneman and the Company were each represented by counsel. Brenneman and Kendall were presented as witnesses for Brenneman, and Yoder and Rozsa as witnesses for the Company. The ultimate issue presented was whether Brenneman was "discharged without just cause in connection with work," and therefore entitled to unemployment compensation. Neither union activity nor sex discrimination was presented as an issue.⁹ However

⁸ English is not Kaesgen's native language. However I am not speaking of a dictionary definition. Rather, I have taken into consideration Kaesgen's own expressed understanding of insubordination, and as will be discussed, the Company's, i.e., Kaesgen's, own policies with respect to "insubordination."

⁹ The hearing was held on November 15, 2 days after Brenneman filed the present unfair labor practice charge. Brenneman filed a prior charge on October 3. However, acting on the advice of the Region's field examiner, she withdrew the charge and filed the present charge. Also on October 3, Brenneman filed a charge with the Ohio Civil Rights Commission, alleging sex discrimination in the Company's denial of a promotion

the underlying factual question presented in the BES proceeding was identical to the factual question presented here, namely, what transpired between Brenneman and the supervisors on the evening of September 5. On November 23 the referee issued his decision. The referee did not purport to summarize the testimony of the witnesses. However, his findings of fact were substantially in accord with the testimony of Terri Brenneman in the present case. On the basis of his findings, the referee concluded that Brenneman was not discharged for good cause, and therefore was entitled to unemployment benefits. The Company did not appeal from the referee's decision, which became final.

Superintendent Rozsa testified that at the BES hearing the referee asked Kendall whether she heard anything at the time Brenneman allegedly told him "if you don't like it, you can fire me." According to Rozsa, Kendall answered, "No, I didn't hear anything." Terri Brenneman testified that the referee asked Kendall whether Brenneman made the alleged statement, that Kendall answered "no," and that Kendall never testified that she did not hear anything. Kendall testified that she could not recall her testimony at the BES hearing, and that she was asked only a few questions, but that she never testified that she did not hear anything. The BES hearing was recorded; however the BES declined to release any transcript or recording of the hearing for use in the present proceeding.

Kendall's testimony in the present proceeding, so far as it concerns those words which Kendall allegedly overheard, is not inconsistent with the testimony of the other witnesses. Kendall and the supervisors all testified that the exchange began when Rozsa asked what was the problem, and all of the witnesses agreed that the exchange closed when Rozsa told Brenneman, in essence, that he did not like her attitude and that she should clock out and go home. However, although Brenneman, Rozsa, and Fladda all testified that Rozsa talked about the length of breaks, Kendall did not mention this part of the conversation. It is possible that, by reason of the noise in the area, Kendall may have missed part of the exchange, even though she believed that she heard everything that was said. It is also possible that with the passage of time, Kendall may have forgotten part of what was said. Kendall, unlike Brenneman, had no personal motive for recalling the details of the conversation. However, if Brenneman had talked back to Rozsa in an apparently insolent manner, then it is probable that Kendall would have heard the remark, and would have remembered it. In these circumstances, the BES referee's fact findings are entitled to evidentiary weight in this proceeding. See *Duquesne Electric and Manufacturing Company*, 212 NLRB 142, fn. 1 (1974). Although the ultimate issue of "just cause" differed from the issue of discriminatory discharge which is involved in the present proceeding, the immediate factual question presented,

in June, and further alleging that sex discrimination contributed to her termination. On December 18, the commission notified the parties that it was not proceeding on the charge. Nothing in the sex discrimination charge conflicted with Brenneman's testimony concerning the facts in the present case.

i.e., what transpired on the evening of September 5, was the same. The referee heard the testimony of the two participants in the second exchange, and of one witness to that exchange, and the hearing was conducted within 3 months of the event. I find that the referee's findings are sufficient to tip the evidentiary scales in favor of Brenneman, and I credit the testimony of Brenneman concerning her exchange with Rozsa. I further find that, in light of the referee's findings, it is more probable than not that Kendall denied that Brenneman made the statement attributed to her by Rozsa.

With respect to Brenneman's exchange with Fladda, the referee did not have the benefit of Fladda's testimony. Therefore his findings are not entitled to any special weight on this matter. As indicated, Julie Kirvin, the only other person who was present at the exchange, was not called to testify in this proceeding. The record does not indicate Kirvin's position with respect to the Union. However, as the General Counsel has the burden of proof in this case, the absence of her testimony tends to detract from the General Counsel's case, rather than from that of the Company. I credit the testimony of Fladda that Brenneman told him "if you don't like it, fire me." However I do not credit Fladda's testimony that her remark was precipitated by nothing more than "that means you two." At the time, Brenneman had reason to be in a good mood. She had just returned from her vacation. Brenneman testified without contradiction that the night before, i.e., upon her return from vacation, Rozsa praised her work and indicated that he was happy to have her back with her crew. It is unlikely that Brenneman would have snapped back so sharply unless Fladda said something more to provoke her. Therefore I credit Brenneman's testimony with respect to the balance of the exchange. I further find that, regardless of which version of the two exchanges is credited, the overall pattern of the Company's conduct indicates that the Company deliberately sought to provoke Brenneman, and then seized upon the incident as a pretext to get rid of Brenneman in reprisal for her union activity. As indicated, Brenneman did not disobey Fladda, and she returned to work just after Kirvin and well before Kendall. Kendall (who as indicated, I have found to be a generally credible witness) testified that it was not unusual for employees to overstay their breaks by a few minutes or to talk back to Fladda. In these circumstances it is unlikely that in the absence of a discriminatory motive Rozsa and Fladda would have pressed the matter by confronting Brenneman after she returned to work. It is also unlikely that Rozsa would have continued to press the matter by sarcastically admonishing Brenneman about the length of breaktime after Brenneman assured him that there was no problem. Even after Brenneman made the alleged remark to Rozsa he did not indicate that he was administering anything stronger than a suspension for the balance of the day in order to afford a cooling off period. The inference is warranted that Kaesgen rather than Rozsa decided to terminate Brenneman and that he used the alleged "insubordination" as a pretext for his action.

Moreover, the Company's own summary discharge of a valued employee over a trivial matter which involved no failure or refusal to perform her assigned duties con-

trasts sharply with the Company's lenient treatment of less qualified personnel, including employees who were ostensibly guilty of "insubordination." In his investigatory affidavit to the Board, Kaesgen stated that the Company never discharged an employee for insubordination. Kaesgen testified that at the time he approved Brenneman's discharge, and at the time he gave the affidavit (October 29) he did not recall such terminations, but that on review of the Company's personnel records he determined that four employees besides Brenneman (Anthony Santagelo, Chris Hughs, Henry Walker, and Kevin Marken) were discharged for insubordination. However the plant was relatively new, the employee complement relatively small, and Kaesgen testified that he was personally involved in all terminations except those which involved application of the Company's progressive disciplinary policy with respect to absenteeism and tardiness. If Kaesgen had terminated or approved the termination of an employee for an unusual offense such as insubordination, it is unlikely that he would have forgotten that fact. These factors, coupled with the ambiguous nature of the employee records in question (which will be discussed), tend to cast doubt on whether the Company ever discharged an employee for "insubordination" per se, and whether, as of September 6, Kaesgen regarded the termination of Brenneman as being one for insubordination. As to the first employee (Santagelo) the Company notified BES that he was discharged for excessive absenteeism, low productivity, poor attitude, and insubordination (in that order). File notations indicate that Santagelo, among his other faults, "refused to report to work on time and constantly wandered off of his job," and was repeatedly warned about his "habitual low productivity." There is no other indication in his file of a factual basis for "insubordination." Nevertheless Kaesgen testified that he was discharged because "finally he refused to do a job." As for Hughs, the Company informed BES that he was discharged for "insubordination—refused to work scheduled working hours." Hughes was a newly hired employee. Kaesgen testified that Hughs was discharged because he refused to work on Saturdays. The Company notified BES that Henry Walker was fired for "willful failure to meet responsibilities," with the word "insubordination" inserted apparently as an afterthought. However a file notation indicates that he was discharged for "incompetence." The file also indicates that Walker was given verbal and written warnings and was placed on disciplinary probation prior to his discharge. Kaesgen testified, in sum, that Walker was an inadequate performer who was hired as a favor to Goodwill Industries and eventually discharged when he finally refused to do his job. The Company notified BES that leadman Kevin Marken was discharged on September 20 because he was underqualified for his position and lacked ability to effectively cooperate with supervisors. File notations indicate that he received a 1-day suspension on August 20, that he refused to follow instructions on how to perform certain work, and that he needed "to show respect for authority and ability to control temper." Nevertheless the Company rehired Marken as a machine operator. Kaesgen testified, in essence, that Marken's alleged "insubor-

dination" made him unfit to be a leadman, but did not preclude him from being a satisfactory machine operator. If so, then it is difficult to see why, by company standards, the alleged "insubordination" by Brenneman, which did not involve any refusal to follow instructions, warranted a discharge from her job as assembler. In sum, the evidence indicates that the Company normally discharged employees only upon the basis of an overall appraisal of their performance, including the duration of their employment, that the Company regarded "insubordination" as a serious, substantial, and continuing refusal to perform assigned work, and that, even when such refusals were taken into consideration, discharge was used as a last resort, following warnings and sometimes suspension. The evidence further indicates that the Company's discharge of Brenneman was a drastic departure from its established personnel policies.

I find that the Company discharged Brenneman in reprisal for her activity on behalf of the Union.¹⁰ Kaesgen was angry that the union activity had forced the Company to deviate from its established policies by granting benefits to its employees, and was fearful of a renewal of such activity when employee discontent again surfaced. After allowing a suitable interval of time to pass, Kaesgen seized upon an available pretext to discharge Brenneman.¹¹ Therefore, the Company violated Section 8(a)(1) and (3) of the Act.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, the Company has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. By discriminating in regard to the tenure of employment of Terri Brenneman, thereby discouraging membership in the Union, the Company has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Company has committed violations of Section 8(a)(1) and (3) of the Act, I shall recommend that it be required to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

¹⁰ In her sex discrimination charge, Brenneman expressed an opinion that her refusal to go out on dates with Supervisor Fladda contributed to her termination. Fladda did not make the decision to terminate Brenneman. However, Brenneman's union activity was a matter of considerable concern to Kaesgen.

¹¹ I attach no evidentiary significance to Kaesgen's self-serving assertions to the employees, at meetings in late September, that Brenneman was discharged for insubordination.

Having found that the Company discriminatorily terminated Terri Brenneman it will be recommended that the Company be ordered to offer her immediate and full reinstatement to her former job, or, if it no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss or earnings that she may have suffered from the time of her discharge to the date of the Company's offer of reinstatement. The backpay for said employee shall be computed in accordance with the formula approved in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in the manner and amount prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).¹² It will also be recommended that the Company be required to preserve and make available to the Board or its agents, upon request, payroll and other records to facilitate the computation of backpay due.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹³

The Respondent, Luk, Incorporated, Wooster, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- (a) Discouraging membership in International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, or any other labor organization, by discriminatorily terminating employees, or in any other manner discriminating against them with regard to their hire or tenure of employment or any term or condition of employment.
- (b) Threatening employees with plant closure, loss of jobs, or more onerous working conditions if they designate or select said Union or any other labor organization as their bargaining representative.
- (c) Expressly or impliedly promising or announcing wage increases or other benefits in order to discourage support for said union or any other labor organization.
- (d) Interrogating employees concerning their union attitude or activities.
- (e) Creating the impression of surveillance of employee union activity by telling employees about reports it received concerning such activity.
- (f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action which is found necessary to effectuate the policies of the Act:

- (a) Offer Terri Brenneman immediate and full reinstatement to her former job, or, if such job no longer exists, to a substantially equivalent position, without prej-

¹² See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716, 717-721 (1962).

¹³ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

udice to her seniority or other rights, and make her whole for losses she suffered by reason of the discrimination against her as set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due.

(c) Post at its Wooster, Ohio, place of business copies of the attached notice marked "Appendix."¹⁴ Copies of

said notice on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

¹⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursu-

ant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."